



Tax Law  
for  
Business

Reynaldo M.  
Prudenciano Jr.

*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

## **Taxability of foreign directors' fees**

THE Securities and Exchange Commission (SEC) issued Memorandum Circular 10, Series of 2013, circularizing the requirement of a tax identification number (TIN) for foreign directors or trustees of corporations, domestic and otherwise. Prior to this, only the passport number is required to be indicated in the general information sheet (GIS) filed with the SEC.

Aside from the GIS, the SEC also requires that the TIN of foreign investors or directors should be indicated in all applications for incorporation or registration of partnership, for amendments, and all other documents filed with the SEC by corporations and partnerships after their incorporation.

This requirement is in relation to Executive Order 98, Series of 1998, which directs all persons, whether natural or juridical, dealing with all government agencies and instrumentalities, including government-owned and/or -controlled corporations and local government units, to incorporate their TIN in all forms, permits, licenses, clearances, official papers and documents, which they secure from these agencies and instrumentalities.

The SEC requirement for the TIN is also in line with Revenue Regulations 7-2012, which provides that nonresident aliens not engaged in trade or business shall be issued such a number for purposes of withholding the tax on their income from Philippine sources.

Basically, the main objective of the TIN requirement is to identify the recipient of the income from which taxes are withheld. Considering that both the SEC and the Bureau of Internal Revenue highlighted the TIN requirements for foreign directors or trustees, it would be worthy to discuss the taxability of the fees they receive in their capacity as members of the board of directors of a company.

What are the taxes due from the fees received by foreign directors? Before discussing the applicable taxes, we will first classify these directors. The first type would be those who function not only as directors/trustees, but also as company employees. The second type would be

those not employed by the company and whose duties are confined to attending and participating in the meetings of the board of directors.

Since they are considered employees, foreign directors of the first type are generally subject to withholding tax on compensation on all salaries, wages, emoluments and honoraria, allowances, commissions and directors' fees.

Foreign directors of this type could be alien residents, an alien who stayed for more than 180 days in the Philippines but with no intention to permanently stay here, or an alien who stayed for less than 180 days in a year. Foreign directors who are resident aliens may be qualified for substituted filing, and therefore are no longer required to file an annual income-tax return (ITR). On the other hand, those who stayed for more than 180 days in any calendar year but with no intention to live here are still required to file an annual ITR. And those who stayed in the Philippines for 180 days or less in any calendar year, though considered employees, are subject to a 25-percent final withholding tax, instead of the 5-percent to 32-percent withholding tax on compensation.

Foreign directors of the first type are explicitly exempt from value-added tax (VAT) under Section 109 (i) of the Tax Code. The fees of the second type, however, are generally subject to regular income tax on individuals. Payments to them as income are subject to 10-percent/15-percent creditable withholding tax. Both resident aliens and those who stayed in the Philippines for more than 180 days in any calendar year but with no intention to reside here are required to file an annual ITR and claim as credit against income tax due, the 10-percent/15-percent tax withheld from their income. Nonresident aliens who stayed in the country for 180 days or less are subject to a 25-percent final withholding tax. Tax treaties may be applied to reduce the rate.

The income of foreign directors who are not employees is not subject to VAT, as there is no activity that is pursued in the course of trade or business. Rather, these director's fees are remunerations paid in the exercise of a right of an owner in the management of a corporation, and are hence exempt from the imposition of the 12-percent VAT or 3-percent percentage tax.

Thus, all foreign directors—whether they're doing other functions as employees—are subject to income tax at different rates, depending on their status, and at different mode of payments. Some are required to file ITRs or are qualified under substituted filing, while others are subject to final withholding tax. The income they received in their capacity as directors, although subjected to income tax, are not subject to VAT or percentage tax.

\*\*\*\*

The author is a senior tax specialist of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of the World Tax Services (WTS) Alliance.

The article is for general information only and is not intended or should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported by a professional study or advice. For comments or questions concerning the article, e-mail the author at [reynaldo.prudenciado@bdblaw.com.ph](mailto:reynaldo.prudenciado@bdblaw.com.ph) or call 403-2001 local 380.